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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA
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10 ESMELING L. BAHENA,

11 Plaintiff,

12 v.

13 MENDOZA,

14 Defendant.

Case No. 1:22-cv-01585-BAM (PC)

15
16 ORDER DENYING PLAINTIFF'S MOTION
17 FOR LEAVE TO FILE AN AMENDED
18 COMPLAINT

19 (ECF No. 60)

20
21 **I. Introduction**

22 Plaintiff Esmeling L. Bahena (“Plaintiff”) is a state prisoner proceeding *pro se* and *in*
23 *forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on
24 Plaintiff’s second amended complaint against Defendant Mendoza for excessive force and
25 deliberate indifference to medical care in violation of the Eighth Amendment. All parties have
26 consented to United States Magistrate Judge jurisdiction. (ECF No. 40.)

27 On March 25, 2024, Plaintiff filed a motion for leave to file an amended complaint. (ECF
28 No. 60.) Defendant Mendoza did not file a response, and the deadline to do so has expired. The
motion is deemed submitted. Local Rule 230(l).

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30 **II. Motion to Amend**

31 **A. Legal Standards**

32 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party’s
33 pleading once as a matter of course at any time before a responsive pleading is served.

1 Otherwise, a party may amend only by leave of the court or by written consent of the adverse
2 party. Fed. R. Civ. P. 15(a). “Rule 15(a) is very liberal and leave to amend shall be freely given
3 when justice so requires.” *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 465 F.3d 946, 951
4 (9th Cir. 2006) (citation and quotation omitted).

5 However, courts “need not grant leave to amend where the amendment: (1) prejudices the
6 opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) is
7 futile.” *Id.* These factors do not carry equal weight. Prejudice is the most important factor to
8 consider. *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990).

9 **B. Discussion**

10 In his motion, Plaintiff requests leave to file an amended complaint to fix and add new
11 arguments and relief. (ECF No. 60, p. 1.) The remainder of the filing appears to be Plaintiff’s
12 proposed amended complaint.

13 In light of Defendant’s apparent non-opposition to Plaintiff’s request, the Court does not
14 find that there would be prejudice to Defendant or that the amendment is sought in bad faith.

15 However, Plaintiff’s motion is untimely. Pursuant to the Court’s November 20, 2023
16 discovery and scheduling order, all stipulated amendments or motions to amend were to be filed
17 by February 20, 2024. (ECF No. 50.) Although Plaintiff has previously sought extensions of
18 time, those requests were denied because he did not ask for an extension of any particular
19 deadline or explain why an extension was necessary. (ECF Nos. 53, 55.) Plaintiff’s recent
20 request for extension of time to amend the pleadings was also denied based on Plaintiff’s failure
21 to explain why an amendment was necessary. (ECF No. 57.) As such, permitting an amendment
22 at this late date, with no cause or good cause presented, would produce an undue delay in
23 litigation.

24 Furthermore, having reviewed the proposed amended complaint, the Court finds that
25 amendment would be futile. Plaintiff cites to Federal Rule of Civil Procedure 19, but continues to
26 name only Defendant Mendoza as a defendant. The remaining factual allegations otherwise do
27 not appear to materially change Plaintiff’s existing claims in any way. While Plaintiff states that
28 he wishes to add new arguments and relief, the only new arguments appear to be state law claims

1 for assault and battery, a violation of Plaintiff's Fourteenth Amendment rights "to be safe and
2 secure on its own place or placement," and a request to file criminal charges against Defendant
3 Mendoza. (ECF No. 60.)

4 With respect to Plaintiff's purported state law claims, the proposed amended complaint
5 fails to allege compliance with California's Government Claims Act, which requires that a claim
6 against the State or its employees "relating to a cause of action for death or for injury to person"
7 be presented to the Department of General Services' Government Claims Program no more than
8 six months after the cause of action accrues. Cal. Gov't Code §§ 905.2, 910, 911.2, 945.4, 950–
9 950.2. Presentation of a written claim, and action on or rejection of the claim, are conditions
10 precedent to suit. *State v. Super. Ct. of Kings Cty. (Bodde)*, 32 Cal. 4th 1234, 1245 (Cal. 2004);
11 *Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1477 (9th Cir. 1995). To state a tort claim
12 against a public entity or employee, a plaintiff must allege compliance with the Government
13 Claims Act. *Bodde*, 32 Cal. 4th at 1245; *Mangold*, 67 F.3d at 1477; *Karim-Panahi v. Los Angeles*
14 *Police Dep't*, 839 F.2d 621, 627 (9th Cir. 1988). Plaintiff has failed to do so, and therefore the
15 proposed amended complaint does not state any claims under California state law.

16 As Plaintiff was a prisoner at the time of the events alleged, any claim he seeks to make
17 under the Fourteenth Amendment regarding the use of force or insufficient medical care falls
18 under the Eighth Amendment. As Plaintiff is already proceeding on Eighth Amendment claims
19 for excessive force and deliberate indifference, a Fourteenth Amendment claim is not necessary.

20 Finally, Plaintiff has no constitutional right to have another person criminally prosecuted.
21 *See Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) ("a private citizen lacks a judicially
22 cognizable interest in the prosecution or nonprosecution of another"). Criminal statutes generally
23 do not provide a private cause of action or a basis for civil liability. *See, e.g., Aldabe v. Aldabe*,
24 616 F.2d 1089, 1092 (9th Cir. 1980) (18 U.S.C. §§ 241 and 242 provide no private right of action
25 and cannot form basis for civil suit). When a criminal statute is violated, the question of whether
26 to prosecute and what criminal charges to file or bring are decisions that generally rest in the
27 discretion of the prosecutor, not the Court. *United States v. Batchelder*, 442 U.S. 114, 124
28 (1979). It would therefore be futile to permit Plaintiff to file an amended complaint seeking this

1 relief against Defendant Mendoza.

2 As Plaintiff's proposed amended complaint would not add any cognizable claims that can
3 proceed in this action, the Court finds that granting leave to amend would be futile. *Lopez v.*
4 *Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). The Court will not expend additional resources
5 screening an untimely amended complaint that fails to state additional cognizable claims and
6 would unduly delay this action.

7 **III. Order**

8 Based on the foregoing, it is HEREBY ORDERED as follows:

9 1. Plaintiff's motion for leave to amend the complaint, (ECF No. 60), is DENIED;
10 2. Plaintiff's second amended complaint, filed February 21, 2023, (ECF No. 21), remains the
11 operative complaint; and
12 3. This action proceeds on Plaintiff's second amended complaint against Defendant
13 Mendoza for excessive force and deliberate indifference to medical care in violation of the
14 Eighth Amendment only.

15 IT IS SO ORDERED.

16 Dated: April 22, 2024

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE

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